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Federal Communications Commission
Washington, D.C. 20554

September 9, 2002

DA 02-2199

92-105

Eric James Glazier
Cellular Directory Information, Inc.
203 N. 34th Street, Suite 517
Philadelphia, PA 19104

Dear Mr. Glazier:

This letter responds to your filing of February 20, 2002, "Request for Clarification & Rulemaking" (CDI Petition).¹ You request, on behalf of Cellular Directory Information, Inc. (CDI), that the Commission: (1) clarify that wireless carriers are classified as local exchange carriers (LECs) or initiate a rulemaking to include wireless carriers as LECs for the purpose of 47 C.F.R. § 51.217 obligations; and (2) enter a ruling directing wireless telephone companies to provide their subscriber records for use in a wireless directory service.² We find that Commission precedent is clear that commercial mobile radio services (CMRS) provided by wireless carriers are not LEC offerings subject to section 51.217 under the existing rules, and we therefore deny the CDI Petition in part. We dismiss the CDI Petition without prejudice to the extent it seeks a rulemaking because on the facts presented, CDI does not appear to be eligible under 47 C.F.R. § 51.217 to request the subscriber records that it seeks.

To the extent you seek a clarification that CMRS providers are considered LECs for purposes of section 51.217 under the current rules, we deny your petition. You request that the Commission clarify "whether or not the Commission so determines that the definition of a LEC should include a wireless provider in the context of 47 C.F.R. § 51.217, 'directory listings.'"³ Section 3(26) of the Communications Act of 1934 (the Act)⁴ defines a LEC as "any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of CMRS under section 332(c), except to the extent that the Commission finds that such service should be included in the definition of such term."⁵ The Commission has not concluded that CMRS providers or any class of CMRS providers are LECs.⁶ Section 51.217 on its face imposes

¹ Request for Clarification and Rulemaking, Cellular Directory Information, Inc., February 20, 2002. The CDI Petition is not verified as required in section 1.52 of the Commission's rules. We remind you that the Commission's rules require a party not represented by an attorney to verify pleadings. We find that waiver of the verification requirement of Section 1.52 is warranted in this case to permit consideration of the issues raised in the CDI Petition. 47 C.F.R. § 1.52.

² *Id.* at 1-2. See also Letter from Eric J. Glazier, CDI, to Magalie Roman Salas, Secretary, FCC, dated February 20, 2002.

³ CDI Petition at 1.

⁴ 47 U.S.C. §§ 151 *et seq.*

⁵ 47 U.S.C. § 153(26).

obligations only on LECs, and does not define that term any differently from the Act.⁷ Therefore, CMRS providers are not required to provide nondiscriminatory access under section 51.217. We note, however, that wireless providers of local exchange service that are not CMRS (*i.e.*, fixed wireless) are generally subject to section 51.217(c)(3) to the extent they have directory assistance databases or directory listings.⁸

In the alternative, you request that the Commission initiate a rulemaking proceeding to bring CMRS providers under the requirements of section 51.217. You state that CDI is “actively engaged in assembling a wireless directory,” and that “[i]t is imperative” that this directory “contains the listings of all major carriers.”⁹ You further state that it would be in the public interest to have a directory of wireless telephone numbers because current directories only list landline numbers and because of the growth of wireless telephone numbers.¹⁰ However, section 251(b)(3) of the Act, and section 51.217, which implements section 251(b)(3), require that LECs provide nondiscriminatory access to their directory listings and directory assistance services only to competing providers.¹¹ The term “competing providers” is defined in section 51.217(a)(1) as providers of telephone exchange service and telephone toll service.¹² Moreover, requesting providers may not publish telephone directories of listing information obtained pursuant to section 51.217.¹³ Based on the facts before us, it does not appear that CDI is a competing provider within the meaning of section 51.217 or that it seeks information for a purpose permitted under section 51.217. Therefore, we dismiss your petition for rulemaking, without prejudice to refiling upon a showing that CDI would benefit from the relief it seeks.

⁶ See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, First Report and Order, 11 FCC Rcd 15499, 15995-96, ¶ 1004 (1996) (declining to classify CMRS providers as LECs).

⁷ See 47 C.F.R. § 51.217(a)(3) (definition of “providing local exchange carrier”).

⁸ A “commercial mobile service” is “any mobile service (as defined in section 3) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public.” 47 U.S.C § 332(d)(1); *see also* 47 C.F.R. § 20.3 (defining CMRS).

⁹ CDI Petition at 1.

¹⁰ *Id.* at 1-2.

¹¹ 47 C.F.R. § 51.217(c)(3); *see also* 47 U.S.C. § 251(b)(3).

¹² 47 C.F.R. § 51.217(a)(1). The Commission has clarified that this definition includes certified competitive LECs and providers of call completion service, and that agents of competing providers may also obtain access pursuant to section 251(b)(3). *See* Provision of Directory Listing Information under the Telecommunications Act of 1934, as Amended, First Report and Order, CC Docket. 99-273, 16 FCC Rcd 2736, 2743-2750, ¶¶ 13-29 (2001) (*SLI/DA First Report and Order*).

¹³ Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended, CC Docket Nos. 96-115, 96-98, 99-273, Third Report and Order, Second Order on Reconsideration, and Notice of Proposed Rulemaking, 14 FCC Rcd 15550, 15615, ¶ 124 (1999) (*SLI/DA Order and Notice*).

In addition, only LECs that provide directory assistance service and compile directory listings must provide access to such services and information under section 51.217(c)(3).¹⁴ Indeed, based on your statement that current directories only list landline numbers,¹⁵ it appears likely that many, if not all, CMRS providers do not compile directory listings as defined in the Commission's rules.¹⁶ Also, it is not clear that the "subscriber records" CDI seeks fall within the information included in the directory assistance and directory listings requirements of section 51.217(c)(3). For these reasons as well, it does not appear that CDI would benefit from the relief you request.

Accordingly, as described above, we deny the CDI Petition to the extent it seeks a clarification of existing rules, and dismiss it without prejudice to the extent it requests a rulemaking. We take this action pursuant to section 4(i) of the Act and sections 0.331, 1.2, and 1.401(e) of the Commission's rules.¹⁷

Sincerely,

Jeffrey S. Steinberg
Deputy Chief,
Commercial Wireless Division
Wireless Telecommunications Bureau

¹⁴ 47 C.F.R. § 51.217(c)(3)(i),(ii).

¹⁵ CDI Petition at 2.

¹⁶ Section 51.5 defines directory listings as any information: (1) identifying the listed names of subscribers of a telecommunications carrier and such subscriber's telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses or classifications; and (2) that the telecommunications carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format. 47 C.F.R. § 51.5.

¹⁷ 47 U.S.C. § 4(i); 47 C.F.R. §§ 0.331, 1.2, 1.401(e).